

**AGREEMENT FOR
PROFESSIONAL SERVICES**

Project Name: Land Surveying Services
Project Scope
Consultant Name: xxxxxxxx
Agreement #:
Authorizing Ordinance: XXXX-XXX

THIS AGREEMENT, is made this day of 2017, by and between the **CITY OF ROCHESTER**, a municipal corporation having its principal office located at City Hall, 30 Church Street, Rochester, New York 14614, herein after referred to as the "City" and _____ with offices at _____, hereinafter to as the "Consultant".

WITNESSETH:

WHEREAS, the City through the Department of Environmental Services, desires to secure the professional surveying services required in connection with the design and construction of Water Main Extensions and Improvements, and other necessary DES/Water Bureau engineering needs, hereinafter referred to as "the Project", and

WHEREAS, the Consultant has the necessary equipment, personnel and expertise to perform the Project.

NOW THEREFORE, in consideration of the terms and conditions contained herein, the parties do covenant and agree as follows:

SECTION 1. DESCRIPTION OF CONSULTANT'S SERVICES

The Consultant shall perform the following services in a professional and competent manner:

Part 1 Description of Project Section

1.101 General Description

This project involves the replacement of city water distribution mains on various streets and other projects undertaken by the Water Bureau throughout the city or other locations outside the city where Water Bureau facilities are located. The Consultant shall provide land surveying and base mapping for specified city streets which will assist the City producing the project design drawings. Within the given limits for each street, the surveying and base mapping will facilitate locating the proposed new water main within the street Right of Way, hydrant installations and new water services extending from the new water main to the tree lawn area.

Section 1.102 Project Area Definition

The project is located on property owned by the City of Rochester or public right of way where Water Bureau facilities are located.

Part 2 Description of Professional Services

Section 1.201 General

- A. The Consultant shall provide planimetric survey and mapping services required for the project.
- B. The Consultant is to have on its staff and to retain during the performance of its services all appropriate professional personnel necessary to completely and accurately perform the services required. Surveying must be performed by or under the direct supervision of a licensed surveyor registered to practice in the State of New York.
- C. The Consultant shall develop and submit to the City, subsequent to the execution of this agreement, a detailed schedule for the orderly and timely completion of the requirements of this agreement.
- D. The Consultant shall maintain an up-to-date file of assembled survey notes and correspondence. The Consultant shall furnish a copy of such correspondence and notes as requested.
- E. The Consultant shall provide "additional services" if required at the request of the City. See Part 2 Section 1.203
- F. The Consultant shall provide personal protective equipment for all personnel working within the public right of way.

Section 1.202 Basic Services

- A. Research

The Consultant shall research appropriate right-of-way alignments, configuration and widths of roads within the project.

B. Public Relations

The Consultant shall distribute notification letters to residents and business owners within the project limits giving information about intended survey. The Water Bureau will provide the letter and all necessary copies for the surveyors use.

C. Field Survey

The Consultant shall perform a planimetric survey of the project area and the area immediately surrounding the project. The limits of the survey will extend at least 50 feet beyond the end limits of a street as defined by the outer limits of the intersecting street's Public Right-of-Way or the limits as defined by the City. The limits laterally along a street shall be defined by the front corners of houses or buildings. The horizontal precision of the survey within the Public Right-of-Way shall be 1:10000. The accuracy standard shall be 08 feet. Typical planimetric features would be:

1. Curbs, street gutters and/or edge of pavement locating points-of-curve, bends, radii and changes in street width. Give material composition of curbing and gutters.
2. Sidewalks within the Public Right of Way and entrance walks leading to houses and buildings. This includes widths, number of steps and material composition of walks.
3. Driveways and drive aprons. This includes driveway width changes from the street to house or building and a brief description of the composition.
4. House or building front corners including porches. Give address of properties.
5. Trees and hedge rows located between the road and houses/buildings. Small shrubbery outside of the Public Right of Way is not necessary. Give size of tree trunks at breast height and width of hedges.
6. Fences (label type of fence, ex.: chain link, wood, picket, stockade, rail, etc.).

7. All utilities that show at the ground surface and identify each: for example: manholes: (sewer, RGE electric, City Electric, gas, telephone, water, etc.); hand-holes; valve boxes, curb boxes (water; gas); sewer clean-outs; poles (light poles; utility poles or both). Over-head wires are not necessary.
8. Sewer manhole and catch basin invert elevations.
9. All signs (indicate whether parking signs, stop signs, street name signs, etc.)
10. Hydrants, hydrant marking posts, cable TV pedestals; traffic pedestals (and traffic wire loops if visible); gas vents.
11. Existing utility stake-out marks are helpful.
12. Miscellaneous: RCS and USGS monuments; walls and retaining walls (give composition); driveway curbs; tree boxes and garden boxes.

D. Mapping

Mapping shall be prepared in digital form at a scale of 1 unit = 1 foot. A north arrow shall show in proper orientation to the segment of topography. The map shall include Public Right-of-Way lines. Mapping shall contain a certification to the City of Rochester noting the accuracy, map date, date of field survey, signed and sealed by a New York State licensed professional land surveyor.

E. Submittals

The Consultant shall develop and submit to the City, an electronic record in original AutoCAD dwg format. Version to be determined after consulting with the Water Bureau. The record shall include the survey layers and existing features and local objects placed on Water Bureau standard layers for such features and local objects using Water Bureau standard symbols and line types. The record will be an accurate and reproducible graphic representation of the project area and its immediate surroundings, including all existing facilities and vegetation. The coordinate system shall be New York State Plane Coordinate System Western Zone NAD 83. The City Datum will be used for vertical data. The scale shall be 1 unit = 1 foot, to produce 20 scale drawings. An electronic sample drawing will be provided. The consultant shall make maximum utilization of

planimetric, topographic, GIS and utility maps and surveys as available from the City, County or private utilities. A surface in AutoCad Civil 3D and a point file will be provided.

F. Ownership of Documents

All original notes, drawings, specifications and survey maps prepared by the Consultant under this Agreement, upon completion of the work required herein, or upon acceptance by the City of each individual Assessment report will become the property of the City and shall be delivered to the City's Authorized Agent. The Consultant may provide a complete electronic file, specifications, survey maps and all other documents on CD in common formats, in lieu of the originals.

Section 1.203 Additional Services

The following shall constitute Additional Services:

- A. Performing work not described under Basic Services when requested and authorized in writing by the City's Authorized Agent including, but not limited to, the following:
 - a. Serving as an Expert Witness on behalf of the City.
- B. If the Consultant is caused expense due to substantial revisions and enlargement of the scope of the project or by increase if the Consultant's responsibilities such revisions having been ordered in writing by the City's Authorized Agent.
- C. Land surveying services projects that are located in locations other than locations within the city of Rochester street right of way.

SECTION 2. CITY RESPONSIBILITIES

The City Shall:

- A. Provide as complete information pertinent to the Project to the Consultant as is reasonably possible.
- B. Examine drawings and other documents presented to the City by the Consultant for review and render decisions pertaining thereto within a reasonable period of time, so as not to delay the work of the

Consultant.

- C. Designate a representative (Authorized Agent) to act as liaison between the City and the Consultant. The Authorized Agent will have the authority and responsibility to transmit instructions and to receive information with respect to the city policies and pertinent to the work covered by this Agreement, except as otherwise limited by Code or Charter of the City.

SECTION 3. TERM

This Agreement shall commence upon execution by the parties and shall terminate on June 30, 2020 with the option to renew for (2) additional one-year periods upon mutual agreement by the parties. Work by the Consultant shall be completed within 120 calendar days upon notice to proceed. A time extension can be granted due to circumstances such as unforeseen weather conditions.

There is no guarantee that the City will provide the same amount of work to the Consultant every year. The City reserves the right to cancel this agreement at any time by giving written notice to the Consultant.

SECTION 4. FEE

A Basic Services

The City shall pay and the Consultant shall accept as full payment for the basic services performed pursuant to this Agreement, a base fee of ____ per street which includes service fees, plus \$____ per linear foot fee as measured along the centerline of the street. In no event whatsoever shall the total fee payable to the Consultant pursuant to this Agreement, including all costs and disbursements whatsoever, exceed **Thirty Five Thousand** dollars (\$35,000) per year or exceed **One Hundred Seventy Five Thousand** dollars (\$175,000.00) over five (5) years. Surveyor's wages are subject to the current New York State Department of Labor, Bureau of Public Works Prevailing Rate Schedules, (refer to Appendix A). The Consultant's Fees shall include the surveyor's wages as required by the Department of Labor. The Consultant must submit documentation demonstrating compliance with the NYS Dept. of Labor. The Consultant shall submit duly executed invoices for payment.

Fees may be subject to an annual adjustment by the Consultant for subsequent years prior to work commenced by the Consultant and are subject to approval by the City.

B. Additional Services

The City will reimburse the Consultant for additional services that have been authorized in writing. In no event, whatsoever, shall the total fee payable to the Consultant for basic and additional services exceed One Hundred Seventy Five Thousand dollars (\$175,000) for five (5) years.

SECTION 5. AUTHORIZED AGENT FOR THE CITY AND THE CONSULTANT

A The City hereby designates :

Patrick J. O'Connor (or his successor)
Director of Water
City of Rochester, Bureau of
Water 10 Felix Street
Rochester, NY 14608
(585)428-7500

B. The Consultant hereby designates:

First Last Name LS.
Owner
Name Surveyors
Main Street
Rochester, NY 146xx
Phone

or their authorized representatives in case of absence, as Authorized Agents of the City and of the Consultant for receipt of all notices, demands, vouchers and other communications and all orders, permissions, and directions pursuant to this Agreement, which shall be sufficiently communicated, given and/or delivered if dispatched by registered or certified mail, postage prepaid, or delivered personally to the authorized agents designated herein. The parties reserve the right to designate other or additional agents upon written notice to the other party which shall be signed by the Authorized Agent of the requesting party.

SECTION 6. INDEMNIFICATION

The Consultant hereby agrees to defend, indemnify and save harmless the City of Rochester against any and all liability, loss, damage, suit, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, or be required to pay by reason or in consequence of the intentionally wrongful or negligent act or omission of the Consultant, its agents, employees or contractors. If a claim or action is made or brought against the City and for which the Consultant may be responsible hereunder in whole or in part, then the

Consultant shall be notified and shall handle or participate in the handling of the defense of such matter.

SECTION 7. INSURANCE

A. General Liability Insurance (IF APPLICABLE)

The Consultant shall obtain at its own expense general liability insurance for protection against claims of personal injury, including death, or damage to property, arising out of the Project. The amount of said insurance coverage shall in the amount Two Million Dollars if said insurance is a "Defense within Limits" policy under which all claim expenses are included within both the applicable limit of liability and self-insured retention. Otherwise, the insurance coverage shall be in the amount of One Million Dollars. Said insurance shall be issued by a reputable insurance company, authorized to do business in the State of New York. Said insurance shall also name the City of Rochester as an insured and copies of the policy endorsements reflecting the same must be provided. The Consultant shall provide the City with a certificate of insurance from an authorized representative of a financially responsible insurance company evidencing that such an insurance policy is in force. Furthermore, the Consultant shall provide a listing of any and all exclusions under said policy. The insurance shall stipulate that, in the event of cancellation or modification the insurer shall provide the City with at least thirty (30) days written notice of such cancellation or modification. In no event shall such liability insurance exclude from coverage any municipal operations or municipal property related to this Agreement.

B. Workers' Compensation and Disability Benefits Insurance

This Agreement shall be void and of no effect unless the Consultant shall secure compensation for the benefit of, and keep insured during the life of this Agreement, any and all employees as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York or the state of the Consultant's residence, whichever may apply. The Consultant shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage have been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Worker' Compensation and/or Disability Benefits coverage is not required by submitting the current and required New York State Workers' Compensation Board's form.

SECTION 8. EQUAL OPPORTUNITY

A. General Policy

The City of Rochester, New York reaffirms its policy of Equal Opportunity and its

commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Opportunity, in accordance with the requirements set forth herein. The City further does not discriminate on the basis of disability, in admission or access to, or treatment or employment in its programs and activities. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall comply with all State and Federal Equal Opportunity laws and regulations and shall submit documentation regarding Equal Opportunity upon the City's request.

B. Definitions

GOOD FAITH EFFORT - shall mean every reasonable attempt to comply with the provisions of this policy by making every reasonable effort to achieve a level of employment of minority groups and female workers that is consistent with their presence in the local work force.

MINORITY GROUP PERSONS - shall mean a person of Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native ethnic or racial origin and identity.

C. Compliance

The Consultant shall comply with all of the following provisions of this Equal Opportunity Requirement:

1. The Consultant agrees that he will not discriminate against any employee for employment because of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status in the performance of services or programs pursuant to this Agreement, or in employment for the performance of such services or programs, against any person who is qualified and available to perform the work in which the employment relates. The Consultant agrees to make a good faith effort to employ minority group persons and females and that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, the Consultant, and its subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status discriminate against any person who is qualified and available to perform the work to which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that applicants are hired and that employees are treated during their employment, without regard to their of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment

and recruitment advertising, layoffs, terminations, rates of pay and other forms of compensation, and selection for training, including apprenticeship. The Consultant agrees to post notices in conspicuous places available to employees and applicants for employment, and to include language in all solicitations or advertisements for employment placed by or on behalf of the Consultant, reflecting this nondiscrimination policy.

2. The Consultant agrees that its employment practices shall comply with the provisions of Chapter 63 of the Rochester Municipal Code, which restricts inquiries regarding or pertaining to an applicant's prior criminal conviction in any initial employment application.
3. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity Laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination, and the Consultant shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Consultant can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.
4. The Consultant shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

SECTION 9. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The City of Rochester hereby gives public notice that it is the City's policy to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. Title VI requires that no person in the United States of America shall, on the grounds of race, color, gender, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the City receives federal financial assistance. Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with the City. Any such complaint must be in writing and filed with the

City Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. Title VI Discrimination Complaint Forms may be obtained from the City at no cost to the complainant, or on the City's website at www.cityofrochester.gov, or by calling (585) 428-6185.

SECTION 11. FREEDOM OF INFORMATION LAW

Disclosures required by New York's Freedom of Information Law ("FOIL") shall not be considered a breach of any confidentiality provisions in this Agreement. Should consultant provide the City with any records it deems confidential and exempt from FOIL, the consultant shall clearly mark such portions of those records as confidential and exempt from FOIL disclosure. Upon any request for disclosure of information so marked, the City will inform the consultant of the request and give the consultant ten (10) business days to submit a written statement of necessity for exempting the records from disclosure pursuant to New York Public Officers Law 89(5). As required by the Public Officers Law, the City will issue a determination as to disclosure within seven (7) business days. If the City determines that the records must be disclosed, the consultant may appeal the City's determination within seven (7) business days. Thereafter, the City shall respond to the consultant's appeal within ten (10) business days. If the City issues an adverse determination, the consultant may appeal the decision within fifteen (15) days of service by commencing an Article Seventy-Eight (78) proceeding under New York's Civil Practice Law and Rules.

SECTION 12. LIVING WAGE REQUIREMENTS

A. Applicability of Living Wage Requirements

This section shall apply and the Consultant shall comply with the requirements of Section 8A-18 of the Municipal Code of the City of Rochester, known as the Rochester Living Wage Ordinance, whenever payments by the City to the Consultant under this Agreement shall equal or be greater than fifty thousand dollars (\$50,000) during a period of one year. If this Agreement is amended to increase the amount payable hereunder to fifty thousand dollars (\$50,000) or more during a period of one year, then any such amendment shall be subject to Section 8A-18.

B. Compliance

The Consultant shall pay no less than a Living Wage to any part-time or full-time Covered Employee, as that term is defined in Section 8A-18B, who directly expends his or her time on this Agreement, for the time said person actually spends on this Agreement. Living Wage, as set forth in this Agreement, shall be the hourly amount set forth in Section 8A-18(C)(2), and any adjustments thereto, which shall be made on July 1 of each year and shall be made available in the Office of the City Clerk and on the City's website, at www.cityofrochester.gov.

Consultant shall also comply with all other provisions of Section 8A-18, including but not limited to all reporting, posting and notification requirements and shall be subject to any compliance, sanction and enforcement provisions set forth therein.

C. Exemption

This section shall not apply to any of Consultant's employees who are compensated in accordance with the terms of a collective bargaining agreement.

SECTION 13. COMPLIANCE WITH MACBRIDE PRINCIPLES

The Consultant agrees that it will observe Ordinance No. 88-19 of the City of Rochester, which condemns religious discrimination in Northern Ireland and requires persons contracting to provide goods and services to the City to comply with the MacBride Principles. A copy of the MacBride Principles is on file in the Office of the Director of Finance.

SECTION 14. COMPLIANCE WITH ALL LAWS

The Consultant agrees that during the performance of the work required pursuant to this Agreement, the Consultant, and all employees working under the Consultant's direction shall strictly comply with all local, state, or federal laws, ordinances, rules or regulations controlling or limiting in any way the performance of the work required by this Agreement. Furthermore, each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to be inserted herein. If, through mistake or otherwise, any such provision is not inserted, or is not properly inserted, then upon the application of either party this Agreement shall be forthwith physically amended to make such insertion or correction.

SECTION 15. AUDIT

The Consultant agrees that the City shall, until the expiration of three (3) years after final payment, have access to and the right to examine, at no cost to the City, any directly pertinent books, documents, papers and records of the Consultant and of any of the subcontractors engaged in the performance of and involving transactions related to this Agreement or any subcontracts.

SECTION 16. PROHIBITION AGAINST ASSIGNMENT

The Consultant is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or any of its contents, or of any right, title or interest therein, or of the power to execute this Agreement, to any other person or corporation without the previous written consent of the City.

SECTION 17. OBLIGATIONS LIMITED TO FUNDS AVAILABLE

The parties specifically agree that the Consultant's duty to perform work under this Agreement and the City's obligation to pay for that work, including any out-of-pocket and subcontracting expenses of the Consultant, shall be limited to the amount of money actually appropriated by the City Council and encumbered (i.e., certified as being available) for this Project by the City Director of Finance (or his authorized deputy). This provision shall limit the parties' obligation to perform even though this Agreement may provide for the payment of a fee greater than the appropriated and encumbered amount.

SECTION 18. EXTENT OF AGREEMENT

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, agreements and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by the party's Authorized Agent.

SECTION 19. STATUS AS INDEPENDENT CONTRACTOR

The Consultant, as an independent contractor, covenants and agrees to conduct the work under this Agreement consistent with such status. The Consultant shall neither pretend nor claim to be an officer or employee of the City by reason hereof, nor make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

SECTION 20. LAW

This Agreement shall be governed by and under the laws of the State of New York. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Monroe, New York.

SECTION 21. NO-WAIVER

In the event that the terms and conditions of this Agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the City from enforcing each and every term of this Agreement thereafter.

SECTION 22. SEVERABILITY

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then

continue to conform to the laws of the State of New York.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

CITY OF ROCHESTER

BY: _____
Lovely A. Warren, Mayor
City of Rochester

CONSULTANT

BY: _____
Name: _____
Taxpayer Id. No. _____

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this ____ day of _____, 20__, before me the subscriber, personally came _____ known, who being by me duly sworn, did depose and say that she resides in the City of Rochester; that she is the Mayor of the City of Rochester, the municipal corporation described in and which executed the above instrument; and that she signed her name to the foregoing instrument by virtue of the authority vested in her by the laws of the State of New York and the local laws and ordinances of the City of Rochester.

Notary Public

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On the ____ day of _____, 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public